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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,260	02/17/2004	Marvin A. Wallace	8328.001	3427
30589	7590	08/16/2005	EXAMINER	
DUNLAP, CODDING & ROGERS P.C. PO BOX 16370 OKLAHOMA CITY, OK 73113			ADDIE, RAYMOND W	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 08/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/780,260

Applicant(s)

WALLACE, MARVIN A.

Examiner

Raymond W. Addie

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/25/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Ransome # 975,457.

Ransome, as cited by the Applicant, discloses a device (unnumbered) for filling an open trench (a) with dirt (c) lying alongside the trench (a) the device comprising:

A skid (19a, 20a) mounted frame (10). Said frame having a forward end and a rear end sized to span said open trench.

Means (19) in the forward end of the frame for moving the previously removed dirt (c) generally into and over the trench (a).

Means (16) in the frame for temporarily leveling the dirt (c) moved into and over the trench (a).

Means (17) in the frame for compacting the temporarily leveled dirt (c).

At least one vertical side plate (18) at each side of said frame (10).

At least one skid (19a, 20a) disposed along a lower edge of each said side plate (18).

Wherein said means (19) includes a plurality of converging scraper blades (19), adjustably supported in the frame.

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Further wherein said means (16) comprises a scraper blade (16) extending across the frame.

Still further wherein said means (17) comprises a compaction roller rotatably supported across the frame (10).

See Fig. 1-3; See also col.1, ln. 37-col. 3, ln. 37.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ransome #

975,457 in view of Reece # 4,539,765.

Ransome discloses a skid mounted device for filling trenches but does not disclose mounting the device to a vehicle.

However, Reece teaches skid (12, 20) mounted trench filling devices (6) are advantageously dragged behind tow vehicles (2), in order to accurately level, windrowed spoil (5), into a trench (3). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the trench filling device of Ransome, with vehicle attachment assembly, as taught by Reece, in order to quickly refill a trench. See Reece Cols. 1-2.

3. Claims 7, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ransome # 975,457 in view of Otto et al. # 6,520,717.

Ransome discloses a device for filling trenches but does not disclose using rubber tires for pre-compacting/leveling the refilled trench. However, Otto et al. teaches rubber tire assemblies (10) can be towed behind trench filling machines (12), for repeated compacting of soil (S), pre-leveled by a trench filling device (12). See Col. 2, ln. 66- col. 3, ln. 50.

4. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ransome # 975,457 in view of Otto et al. # 6,520,717 as applied to claim 7 above, and further in view of Berrange # 4,019,825.

Ransome in view of Otto et al., disclose a trench filling device having a plurality of devices to fill, level and compact spoil (5) into a trench (3); to include selectively, biasing the compacting wheels, via hydraulic pressure means (H), to control the compacting force, applied to the filled trench. What Ransome in view of Otto et al., do not disclose is biasing the compacting wheels with a spring assembly. However, Berrange teaches air spring assemblies (11) reliably and accurately suspend compacting wheels (1) on a tow-able frame (6). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the trench-filling/compacting device of Ransome in view of Otto et al., with an air spring assembly, as taught by Berrange, in order to reduce vibration transmission to the frame (6). See cols. 2-3.

5. Claims 1, 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ransome # 975,457 in view of Mangum # 3,680,452.

Ransome discloses essentially all that is claimed, except for the use of an adjustable leveling blade. However, Mangum teaches it is known to provide ditch rollers with an adjustable leveling bar (72) intended to level fill dirt refilling the ditch, thus forming a desired strata of backfill. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the trench filling device of Ransome, with an adjustable leveling blade, as taught by Mangum, in order to facilitate filling the trench. See Mangum Col. 4.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ransome # 975,457 in view of Mangum # 3,680,452 as applied to claim 1 above and further in view of Reece # 4,539,765.

Ransome in view of Mangum disclose a skid mounted device for filling trenches but does not disclose mounting the device to a vehicle. However, Reece teaches skid (12, 20) mounted trench filling devices (6) are advantageously dragged behind tow vehicles (2), in order to accurately level, windrowed spoil (5), into a trench (3). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the trench filling device of Ransome in view of Mangum with vehicle attachment assembly, as taught by Reece, in order to quickly refill a trench. See Reece Cols. 1-2.

7. Claims 7, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ransome # 975,457 in view of Mangum # 3,680,452 as applied to claim 1 above and further in view of Otto et al. # 6,520,717.

Ransome in view of Mangum disclose a device for filling trenches but does not disclose using rubber tires for pre-compacting/leveling the refilled trench. However, Otto et al. teaches rubber tire assemblies (10) can be towed behind trench filling machines (12), for repeated compacting of soil (S), pre-leveled by a trench filling device (12). See Col. 2, ln. 66- col. 3, ln. 50. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the trench filling device of Ransome in view of Mangum, with a rubber tire assembly, as taught by Otto et al., in order to permit repeated compacting of the soil (S), pre-leveled by a trench filling device (12).

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ransome # 975,457 in view of Mangum # 3,680,452 and Otto et al. # 6,520,717 as applied to claim 7 above, and further in view of Berrange # 4,019,825.

Ransome in view of Mangum and Otto et al., disclose a trench filling device having a plurality of devices to fill, level and compact spoil (5) into a trench (3); to include selectively, biasing the compacting wheels, via hydraulic pressure means (H), to control the compacting force, applied to the filled trench. What Ransome in view of Otto et al., do not disclose is biasing the compacting wheels with a spring assembly.

However, Berrange teaches air spring assemblies (11) reliably and accurately suspend compacting wheels (1) on a tow-able frame (6). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the trench-filling/compacting device of Ransome in view of Mangum and Otto et al., with an air spring assembly, as taught by Berrange, in order to reduce vibration transmission to the frame (6). See cols. 2-3.

Response to Arguments

9. Applicant's arguments filed 5/25/05 have been fully considered but they are not persuasive.

Applicant argues against the reference to Ransome by stating "Ransome does not teach...the division plates do not act to temporarily level the dirt moved into and over the trench...but rather the division plates extend upward above the grade line and receive filling earth between them".

However, the Examiner does not concur.

Although Ransome does not explicitly recite the intended use of temporarily leveling fill dirt, with said division plates, it is noted Applicant readily admits Ransome discloses "the division plates ...receive filling earth between them", the disclosure is found in lines 41-100. Ransome further discloses the "shoveling blades" (19) are extensions of division plates 16. Each shoveling blade (19) is configured to pass on or above the grade line adjacent the trench, until the cumulative affect of all the shoveling blades

Throw the loose dirt over walls (10) between division plates (16) and into the trench.

Further, it is inherent that the loose fill being moved between the plates (16), as the machine is advancing, is then directed downwardly, into the trench, at least partially by contact of the division plates (16), based upon the amount and rate at which the loose fill is "shoveled" between division plates (16) via shoveling blades (19).

Therefore, it would have been inherent to one of ordinary skill, that the division plates (16) of Ransome perform the function of means for temporarily leveling the dirt moved into and over the trench; as required by the claims.

Therefore, the arguments are not persuasive and the rejection is maintained.

Applicant then argues against the combination of Ransome in view of Reece by suggesting " Ransome with the teachings of Reece does not teach, disclose or even suggest Applicant's device for filling an open trench as recited in Applicant's independent claim 1 and thus, claim 2 which depends therefrom. As noted above, Applicant's inventive concept, as recited in claim 1, resides in a device for filling an open trench that has a means in the frame for temporarily leveling the dirt that is moved into and over a trench".

However, the Examiner does not concur.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

It is noted Applicant does not put forth the merits, nor arguments in favor of Claim 2.

Applicant then argues against the combination of Ransome in view of Reece by suggesting "Reece does not supply the deficiency of Ransome. Reece teaches a device mounted to a forecarriage and towed so as to backfill a trench. There is no teaching in Reece of a device that has a means for temporarily leveling dirt moved into and over a trench...As the Examiner is aware, the prior art must suggest the desirability of the claimed invention...Providing the skid mounted device for filling trenches in Ransome with the teaching that the device may be towed In Reece would not provide the means for temporarily leveling dirt moved into and over a trench.

However, the Examiner does not concur.

As put forth above, it is inherent the loose back fill, moved by shoveling plates (19), to a position between division plates (16), while the machine is in motion, would then be directed into the trench by the division plates, until the trench is filled, or until the backfill is removed from adjacent the trench. It is further inherent that should more back fill be

present then the trench can accommodate, the excess back fill would then be displaced in a forward direction, and/or build-up in front of each division plate until the machine stopped its forward progress. Considering the fact a plurality of compaction drums are used to compact the back filled trench, any excess fill dirt, would then be directed, and leveled by a subsequent division plate, for further compaction by the next subsequent compaction drum (17). Hence, in light of the disclosure of Ransome, specifically Page 1, Ins. 90-100; Page 2, Ins. 11-25.

Applicant then argues against the combination of Ransome in view of Otto et al., by suggesting "Otto et al. does not teach, disclose or even suggest Applicant's device for filling an open trench as recited in Applicant's independent claim 1 and thus, claims 7 and 9 which depend therefrom... Otto et al. does not supply the deficiency of Ransome. Otto et al. teaches a plurality of roller members, such as tire assemblies, towed behind a vehicle for compacting paving material. However, as discussed above, the Otto et al. reference does not supply the deficiency to the Ransome reference as to claim 1 and thus, claims 7 and 9 which depend therefrom, i.e. Ransome does not teach a device that has a means for temporarily leveling dirt moved into and over a trench. Thus, Ransome cannot be used as a basis, either alone or in combination with Otto et al. to establish a prima facie case of obviousness over claims 1, 7 and 9 which depend therefrom".

However, the Examiner does not concur.

As put forth above, it is inherent Ransome discloses "means in the frame for temporarily leveling the dirt moved into and over the trench". See Page 1, Ins. 90-100; Page 2, Ins. 11-25.

Further, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Therefore, the argument is not persuasive and the rejection is maintained.

Applicant argues against the combination of Ransome in view of Otto et al. and further in view of Berrange by stating "Ransome does not teach...a device for filling and open trench...having a means in the frame for temporarily leveling the dirt moved into and over the trench".

Applicant then suggests "Berrange reference does not supply the deficiency of the Ransome reference".

However, the Examiner does not concur.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Conclusion

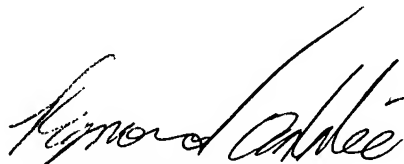
10. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond W. Addie whose telephone number is 571 272-6986. The examiner can normally be reached on 6AM-2:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Raymond Addie
Patent Examiner
Group 3600

8/11/05